

February 14, 1996

Before the
Federal Communication Commission
Washington, D.C. 20554

In the matter of

Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
Implementation of Sections 3(n) and 322)
of the Communications Act)
Regulatory Treatment of Mobile Services)
Implementation of Section 309(j))
of the Communications Act-Competitive Bidding)

PR Docket No. 93-144
RM-8117, RM-8030, RM-8029

DOCKET FILE COPY ORIGINAL

GN Docket No. 93-252

PP Docket No. 93-253

COMMENTS of Genesee Business Radio Systems, Inc. (Genesee)

Second Further Notice of Proposed Rule Making

Genesee Business Radio Systems, Inc. (Genesee) is a small business that sells, services, and rents dispatch radio equipment in the 450 MHz and 800 MHz frequency bands. Genesee sells and services 100 SMR customers with 1000 radios that use the 800 MHz SMR systems operating in the Rochester, NY area.

Our location is within the Canadian border area (Region 2) which limits our available SMR channels from 280 to 60 in the 800 MHz band that are not contiguous channels.

We do not agree with the FCC approach to re-classify the 800 Mhz SMR spectrum and auction off the upper 200 channels of 800 Mhz spectrum to mainly one bidder (NEXTEL Communications, Inc.) and then have incumbents re-tuned to other 800 Mhz frequencies. We have voiced our opinion without impact on changing the FCC regulations regarding the erosion of incumbents SMR systems by auctions.

A. Disaggregation of Channel Blocks on the Upper 200 Channels of 800 MHz SMR Spectrum.

261. We agree that EA licensees should be permitted to disaggregate their spectrum blocks.

262. The two ways are OK.

263. We would suggest EA licensees retain a minimum 10 channels to keep the continued business operation, and hinder speculators from the buy and sell approach.

B. Partitioning on the Upper 200 Channels of 800 MHz SMR Spectrum.

267. We agree to the 2 ways of partitioned acquiring EA licenses. We prefer 40dBu contour rather than geographic county lines.

268. We believe the EA licensee should keep the largest city as a service area.

C. Mandatory Relocation in the Upper 200 Channels.

1. Distributing Relocation Costs Among EA Licensees.

269. We believe sharing of costs for each retuning of EA licensees is appropriate.

2. Relocation Costs.

272. Actual relocation cost must also include existing antenna configuration or additional antenna tower/building rent, overtime re-tuning cost and legal fees. Many customer fleets will have concern that they will have no benefit of this retuning (only re-programming of their radios to new frequencies) to their operation, and the retuning will have to be scheduled at nights or weekends, not day time during their productive period.

Two years ago we calculated the retuning cost for 900 radios on a 10 channels SMR system. The customer scheduling cost for 90 customers @ 2 hrs each @ \$60/hr. was \$10,800. The retuning cost for the 900 radios varied from \$25 to \$90 each plus travel time (3 trips to complete each customer) at .5 hr/radio to re-program was a total \$49,600. The total retuning costs for only existing customer radios was \$ 60,400 or \$67 per radio.

We strongly demand that only the incumbent retune their customers, and NOT the EA licensee. The customer will have no benefit from retuning, and the incumbent will want to control any customer frustration or problem by scheduling and providing the retuning. In addition, we recommend that an incentive be paid by the EA licensee to each customer for each retuning at \$25 per radio for customer inconvenience.

Extra other costs for the EA licensee listed are the temporary backbone repeaters, combiners and antennas with coax to be used during the retuning; spare and replacement radios; such as the Johnson Model 8700 with limited bandwidth of 1MHz (250 channels) that need to go to the radio service shop for receiver & transmitter re-alignment to new frequencies, not the full bandwidth of 2.4MHz (600 channels) of the later products; and legal fees are additional costs plus the named costs of the FCC 2nd Report & Order.

273. Creation of Reimbursement Rights.

The relocation agreement can share relocation costs with other EA licensees, with the proviso that one step retuning is done. The FCC rules should have a premium each additional time customer radios are retuned due other EA licensees asking later for retuning changes, like 2nd time radios re-programmed adds 20% premium for the incumbent, 3rd time radios re-programmed adds 40% premium and 4th time radios re-programmed adds 60% premium for the incumbent. Customers will not be accommodating each additional time their fleet of radios are to be scheduled and re-programmed because of other EA agreements that come later or are changed. We also recommend that the incentive be paid by the EA licensee to each customer at another \$25 per radio for additional re-programming inconvenience of the customer.

274. Payment.

Payments for agreed relocation's costs should be 100% held in escrow with 20% down payment on signing agreement and 60% partial payments (up to four) as the work is completed and final 20% when frequencies are free and clear with retuning.

276. Dispute Resolution Issues.

We suggest a 90 day mediation period with both parties sharing the mediator's cost before arbitration goes in place.

278. We believe the FCC Compliance & Information Bureau could resolve disputes as prompt as an outside arbiter. We suggest that an outside arbiter should be appointed with the consent of AMTA, PCIA, SMR-WON and ITA, in that each party would have a veto on the nominee.

3. Comparable Facilities.

283. We would add (d) use the existing antenna configuration and (e) only 806-821 / 851-866 MHz in the mandatory period, except the Mexican border area having 821-824/866-869 MHz.

We have a question regarding how the FCC will issue the incumbent grant if all frequencies remaining with the incumbent are not YX, but inter-category shared GX, GB, IX or PX. The current FCC rules require at least two YX frequencies be in a Call Sign with other inter-category frequencies in order that the inter-category frequencies retain the YX SMR service category.

284. Old SMR radio equipment unable to be retuned due to obsolescence or high cost should have a replacement radio product with either used (next generation) product of the same manufacturer or another serviced product by the incumbent of a different manufacturer. We agree that analog for analog is obligation for EA licensee. We require the comparable replacement radio equipment be only replacement analog radio equipment that is a product with an authorized dealer/service agreement of the incumbent's shop which the incumbent has trained its technicians, has stocked spare parts, and is currently serviced by its service shop.

4. Relocation Guidelines - Good Faith Requirement During Mandatory Negotiations.

286. We believe that good faith would also be that the incumbent upon notice by EA Licensee of retuning that the incumbent would reply in 90 days with a list of FCC Call Signs that make up the incumbents system and the list of multiple roaming FCC Call Signs to be re-programmed during the retuning, with a count of radios by home system and listing of radios on the various roaming systems. The mandatory period should not commence for at least 6 months after an offer from the EA licensee is presented to the incumbent with detailed frequencies and costs.

The penalty to impose on a party is not required if steps are included for the voluntary period.

E. Licensing the Lower 80 and General Category Channels.

1. Geographic Area Licensing.

294. Geographic licensing is only possible with auctions. We are unclear if these channels are geographic, then how will the FCC offer geographic to inter-category channels to SMRs from the other service pools. We can see that after retuning that some channels for incumbents will be geographic and some site specific.

2. Service Areas.

297. We agree to have the same service area definition in both upper and lower channels.

3. Channel Assignments.

301. We do agree with the 80 channels in the same 5 channel blocks according to the current FCC rules. We disagree with your breakout for the General Category. It should be more equal for other incumbents to have equal chance like 50-50-50, not 120-20-10.

4. Operational and Eligibility Restrictions.

305. What will happen in the border areas, like Canada? We have neither the 80 channels or the General Category channels within 100km of the border. Only the authorized channels within 100km of the Canada border should be auctioned.

We agree that no additional restrictions in the lower channels are required , compared to the upper channels, so as to have some future ability for the smaller SMR operator.

5. Channel Aggregation Limit.

308. We believe the 80 channels should be issued at 5 channels at a time to each applicant until the 5 channels are granted and constructed.

6. Construction Requirements.

a. Construction Period.

311. We agree to stay with the 12 months construction period.

b. Coverage Requirements.

312. We agree to the same requirements for the lower channels as the upper channels for any new licensee, but give grand-parent protection to the incumbent's present site as sufficient.

313. We disagree that incumbents need to serve beyond their present sites, as they should be grand-parented to their own market needs already served.

314. We agree with consistent approach for all present bands.

7. Treatment of Incumbents.

315. We strongly state that incumbents should be grand-parented to their present grant even if inter-category sharing was granted, and not require retuning of any 80 channels, retuned inter-category, or General Category channels.

316. We agree with the right for incumbent to modify or add within their 22dDu interference contour.

317. We agree.

8. Co-channel Interference Protection.

318. We agree.

9. Licensing in Mexican and Canadian Border Areas.

319. We agree to have all 80 channels and the General Category channels be auctioned and also subjected to the relevant FCC rules regarding international assignment, waivers, and coordination.

F. Regulatory Classification of Lower 80 and General Category Channels.

322. We disagree to re-classify all licenses to CMRS. The purpose is only to conduct auctions with unity of classification.

G. Competitive Bidding Issues for Lower 80 and General Category Channels.

1. Auctionability of Lower 80 and General Category Channels.

323. No comment.

324. We disagree that no consideration is given for grand-parenting existing classification or service of the General Category channels.

325. No comment.

2. Competitive Bidding Design..

a. Bidding Methodology.

330. We have experienced the 900 SMR auction. We agree to simultaneous multiple round auctions. We suggest that the first 5 rounds be done on a daily basis and then go to two rounds per day. We do not think the alternative out-cry method will be less burdensome.

b. License Grouping.

333. Grouping like the 900 SMR auction with each 5 channel block by market was understandable. Therefore, if a national approach was desired then the A block would be the same frequencies in all markets.

c. Bidding Procedures.

337. The 900 SMR auction went from \$.02 per activity unit or 10% of high bid to \$.01 per activity unit or 5% of high bid in the 12th round. We agree with \$.01 & 5%. We believe that the FCC auction rules for the 900 SMR auction are working.

338. Stopping rules.

We agree to market-by-market closure.

340. Activity Rules.

We believe the eligibility rule and stages of the 900 SMR auction make bidders participate early in the auction, rather than wait to the end. The eligibility formula and the calculations for current bid-activity total units took some time to figure out, in that we lost waivers early in the auction because we did not understand to reduce our eligibility when some properties that had different bid-activity units in the same market due to incumbents.

341. We believe the 900 SMR auction activity will be adequate for industry trade organizations or the FCC to explain it's relationship of bid-activity units in the various auction stages and the bidders eligibility before the 800 SMR auctions commence.

342. Duration of Bidding Rounds. See our comment at para. 330.

d. Rules Prohibiting Collusion.

345. We agree. The 900 SMR auction did a good job on this point.

3. Procedural and Payment Issues.

a. Pre-auction Application Procedures.

349. We agree. It is the same as the 900 SMR auction rules.

352. We disagree, because the FCC could allow a bidder to go for all markets in the 900 SMR auction. We ask that the all market bidders be required to bid in at least 5 markets in order to claim all market bidder.

b. Amendments and Modifications.

354. We agree. It is the same as the 900 SMR auction rules.

c. Upfront Payments.

357. We agree. It is the same as the 900 SMR auction rules - a \$2,500 minimum payment.

d. Down Payment and Full Payment

360. We agree. It is the same as the 900 SMR auction rules.

361. We agree. It is the same as the 900 SMR auction rules.

e. Bid Withdrawal, Default, and Disqualification.

363. We agree. It is the same as the 900 SMR auction rules.

f. Long-Form Application.

365. We agree. It is the same as the 900 SMR auction rules.

g. Petitions to Deny and Limitations on Settlement.

368. We agree.

h. Transfer Disclosure Requirements.

370. We agree.

I. Performance Requirements.

371. We agree.

4. Treatment of Designated Entities.

a. Overview and Objectives.

374. The small business category for revenues under \$3 million average past 3 years is adequate.

b. Eligibility.

i. Small Business.

a) Special Provisions.

376. We agree to have the same as the 900 SMR auction rules.

b) Definition.

380. We agree. It is the same as the 900 SMR auction rules.

ii. Minority- and Women-Owned Businesses.

384. No comment.

385. No comment.

iii. Reduced Down Payment.

388. We agree.

c. Bidding Credits.

391. We agree. It is the same as the 900 SMR auction rules.

392. We believe the 900 SMR auction rules were adequate. The 25% interest for attribution is OK.

393. We disagree. Preference bidding credits should not be restricted to a market or several markets but all markets.

d. Installment Payments.

397. We agree.

e. Set-Aside Spectrum.

399. We agree to a lower financial cap, without a specific level.

f. Unjust Enrichment Provisions.

401. We agree.

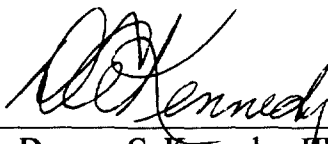
g. Partitioning.

403. We believe the partitioning should not only be to rural telephone companies, but similar to upper 800 SMR channels.

IN CONCLUSION, we disagree that the General Category channels be exclusively SMR channels, so that the FCC may auction these channels along with the lower 80 SMR channels. We do not understand how the FCC will classify incumbent inter-category shared frequencies that now operate under another service, and therefore the FCC should not re-classify the lower General Category to exclusive SMR channels.

WHEREFORE, THE PREMISES CONSIDERED, Genesee Business Radio Systems, Inc. respectfully submit these comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

GENESEE BUSINESS RADIO SYSTEMS, INC.

By: 
Duncan C. Kennedy, III
President